South African Revenue Service

BINDING PRIVATE RULING: BPR 406

DATE: 31 July 2024

ACT	**:**	**INCOME TAX ACT 58 OF 1962 (the Act)**
SECTION	**:**	**SECTION 10(1)(*g*C)**
		ARTICLE 18 OF THE CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME (the Treaty)
SUBJECT	**:**	**TREATY RELIEF – SUPPLEMENTARY PENSION FUND PAYMENTS**

Preamble

This binding private ruling is published with the consent of the Applicant(s) to which it has been issued. It is binding between SARS and the Applicant and any Co-Applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines that Belgium has the taxing rights to amounts to be received by or accrue to South African (SA) residents under Belgium’s supplementary pensions system.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 25 March 2024. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of –

- section 10(1)(*g*C); and
- paragraph 2 of Article 18 of the Treaty.

3. Parties to the proposed transaction

The Applicant: A resident natural person

The Co-Applicant: A resident natural person

4. Description of the proposed transaction

The Applicant and Co-Applicant (the Applicants) are residents. They are consultants of an SA company (SA Co). SA Co is a wholly-owned subsidiary of a foreign company.

The Applicant is a non-executive director (not an employee or consultant) of a company resident in Belgium (Belgium Co).

The Co-Applicant was a non-executive director (not an employee or consultant) of Belgium Co. She resigned towards the end of 2023.

When working outside of SA, the Applicants' services were rendered mostly (approximately 80%) for Belgium Co and its non-SA subsidiaries. The remaining 20% of services rendered were related to SA Co.

Belgium has a supplementary pensions system which is aimed at supplementing its social security pensions system.

In order to supplement the Applicants' social security pensions payable by the Belgian state, Belgium Co entered into an agreement with an insurance company to provide supplementary pension benefits for all its directors (the Pension Plan) including the Applicants. The Pension Plan is governed by specific legislation in Belgium aimed at supplementing the social security pensions system of Belgium.

Upon reaching the retirement age of 65, the Applicants propose to each elect to withdraw a lumpsum from the Pension Plan. Each lumpsum will be taxable at an effective rate of 17.655% under Belgium law.

5. Conditions and assumptions

This binding private ruling is not subject to any additional conditions and assumptions.

6. Ruling

The ruling made in connection with the proposed transaction is as follows:

a) Section 10(1)(*g*C) will not apply to payments that will be received by or accrue to the Applicants in terms of the Pension Plan.

b) Paragraph 2 of Article 18 of the Treaty will apply in respect of payments to be received by or accrue to the Applicants from the Pension Plan. The payments will be taxable only in Belgium.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of six years from date of issue.

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